IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8697 of 1997

WITH

CIVIL APPLICATION NO.6285 OF 1998

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANLAL MEPABHAI PATEL

Versus

COMPETENT AUTHORITY AND EX OFFICIO ADDITIONAL COLLECTOR

Appearance:

MR MIHIR H JOSHI for Petitioner

MR PM THAKKER, Senior Counsel with MR HARIN P RAVAL for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/07/1999

ORAL JUDGEMENT

1. Heard the learned counsel for the

respective parties.

2. There is no controversy that the present petition challenges certain orders passed by the authorities under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976.

3. There is also no dispute that the State of Gujarat adopted the Urban Land (Ceiling & Regulation) Repeal Act, 1999 on 30th March 1999. There cannot be any dispute that the present petition was pending on the date when the Repeal Act came into force.

4. At the present stage I am directly concerned, not with the merits of the petition, i.e. not with the merits of the impugned orders, but as to the applicability of Section 4 of the Act of 1999. This limited controversy not only goes to the root of the problem, but is also the substantial contention brought before this court in a note filed by the respondents herein.

5. Section 4 of the Act of 1999 reads as under:

> "4. All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:
>
> Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."

On a plain reading of the aforesaid section it becomes firstly obvious that it relates to abatement. The principle of abatement under this section is mandatorily applicable by the use of the word "shall" in the first part of the said section. Thus, the court has no discretion in determining whether the principle of abatement shall apply, or if so, whether it shall apply only in limited circumstances.

6. In this context learned counsel for the petitioner submits that section 4 is necessarily to be read as applying the principle of abatement, with a view

to examine what rights are saved under the Repeal Act. In this context he submits that only the proceedings dealing with inchoate rights would abate i.e. rights which have crystallized under various orders would not be affected by the principles of abatement.

7. To my mind, there is either some confusion in the submission and/or a confusion in appreciating the scope and effect of the very principle of abatement. Firstly, the fundamentals of jurisprudence lay down that it is only proceedings which can abate, and not judgements, orders, decrees and/or the crystallization of rights as determined by the pronouncement of a determination of the proceedings. In other words, whereas the proceedings represent a procedural right to obtain an adjudication by an appropriate forum, the judgement, decree or order represents the culmination of such procedural right and represents the crystallization of the rights between the parties, which were in dispute in the proceeding, and were asserted and disputed in such proceeding. On a plain reading of section 4 it becomes obvious that the intention of the Parliament was merely to bring an end to all proceedings; "all proceedings" have obviously been clarified to mean those proceedings which relate to any order made or purported to be made under the principal Act. In short, therefore, and in plain language, where any orders were made or purported to be made under the Act of 1976, and where those orders were challenged by way of an appeal, revision or a writ petition, or perhaps even a suit (if permissible), such proceedings wherein such challenge was made would be proceedings for the re-examination of the rights of the parties. It is specifically these proceedings which have been directed to have abated, without reference to the rights of the parties which have been determined in the orders (being the subject matter of challenge in such proceedings). Thus, in my opinion, the very concept of abatement applies only to proceedings, i.e. to pending proceedings, and it is not rationally possible to read section 4 with a view to analyse and dissect the rights crystallized in the orders which are the subject matter of the proceedings, merely with a view to examine what classes of rights would survive and what classes of rights would not.

8. A parallel may be considered, by way of illustration. An appeal filed by the judgement-debtor of a decree may abate by operation of statute. This abatement by itself does not affect the decree; the appellate court declaring the appeal to have abated is not called upon to decide the effect of abatement on the

decree. This question viz. the rights of parties under the decree, remains open, and can be considered in execution proceedings, where all contentions would be considered on merits.

9. Another contention sought to be raised by the learned counsel for the petitioner is that this is a petition under Article 226 of the Constitution of India, and that the jurisdiction of this court under this Article does not arise from the statute. Since this court does not exercise statutory jurisdiction in the purest sense, this court is not bound by the mandate enunciated in section 4.

10. In the context of the aforesaid submission, I am of the opinion that it makes no difference whether the jurisdiction of this court is derived from the statute or is derived from a specific provision of the constitution. The fact remains that even while exercising jurisdiction under Article 226 of the Constitution of India, this court can exercise whatever jurisdiction it has under this Article, while remaining bound by the parameters of the statute. In other words, even the High Court's jurisdiction under Article 226 of the Constitution of India, whether we call it a constitutional jurisdiction or a discretionary jurisdiction or a writ jurisdiction, is not beyond the statute. Thus, if section 4 creates the mandate in respect of abatement of all pending proceedings, I am of the opinion that such mandate would apply even to the High Court exercising its writ jurisdiction under Article 226. Even otherwise, the phrase "before any court, tribunal, or other authority" is sufficiently wide to indicate the intention of Parliament so as to cover all pending proceedings, irrespective of the forum where they were pending and irrespective of the nature of jurisdiction which that forum would be exercising.

11. Learned counsel for the petitioner further submitted that the provisions of section 4 of the Repeal Act cannot be or should not bel read in an inequitable manner, so as to lead to a conclusion that the right is saved, but remedy is lost. In my opinion, this is a trite submission, but without fundamental substance. The fundamentals of jurisprudence lay down that there is no right without a remedy. In other words, if there is no remedy (procedural), there is no right (absolute).

12. However, there is another perspective available to test the aforesaid submission. As is well-known, almost all statutes create procedural rights in favour of

a party or a citizen, where his grievances can be redressed either by way of appeal or revision. It is also well known that under a given statute a second appeal arising from a first appellate order is permissible, whereas under some other statute such a second appeal is not permissible. Furthermore, a remedy by way of a revision is not available under all statutes. In other words, what remedies shall be available to an aggrieved party is determined by the statute and not by the equities of the matter. It is for the Legislature in its wisdom to determine what procedural remedies by way of appeal or revision or review should be made available to an aggrieved party. In a given case under a given statute merely because a remedy is not available, does not necessarily mean that the absence of such a procedural remedy renders the statute inequitable. Even if such a position can be considered to be inequitable, it is after all a reflection of the wisdom of the Legislature, and it is not for the courts to go beyond or question such wisdom. When section 4 is tested in the context of this submission, the only conclusion which can be drawn is that it was the intention of the Legislature to cut short all pending proceedings which arose from orders made under the Act of 1976. This intention is both firm and clear on a plain reading of section 4. It would, therefore, be incongruous to accept such a submission and to hold that because the remedy is cut short (by saving the rights created by the impugned orders), the statute is inequitable and therefore requires to be re-read or reinterpreted.

13. Even otherwise, equity has no place in the scheme of interpretation of statutes. The only possible exception may be where a number of interpretations are possible, and a given interpretation leads to inequity. Even in the latter case, it is not the equities between the parties that is relevant, but only the intention of the Legislature.

14. Learned counsel for the petitioner has drawn my attention to a decision of the Full Bench of the Calcutta High Court in the case of Jatindra Nath De Vs. Jetu Mahato, reported at AIR 1946 Calcutta 339. He has drawn my attention to para 25 of the said decision.

15. In the context of the aforesaid decision, it appears to me that the Full Bench was dealing with the observation of Sargant J. in (1920) 2 Ch. 377. Here the Full Bench was considering the effect of the amending or repealing statute on the rights and procedure available under the previous statute. It was in this

context that the Full Bench observed as under:

> "If rights and procedure are both altered by an amending or repealing statute, then, if the rights accrued under the previous enactment are saved, it would seem to be consequential that the old procedure is saved as well, unless the new Act makes the new procedure applicable to old rights. If such be not the case, the right would seem to be saved to no purpose, for if a suit be brought under the general law, it is likely to be met, and met successfully, by the plea that a special right created by a statute can only be enforced by the special procedure prescribed."

The aforesaid observations, in my opinion, have no direct application to the interpretation of section 4 of the Repeal Act. Very clearly, as already conceded by learned counsel for the petitioner, and in fact that is his grievance, that the Repeal Act does not contemplate the saving of any right created by the Act of 1976. However, the subtle, but pertinent distinction which learned counsel for the petitioner has failed to note is that the Repeal Act of 1999 consciously chooses (in the reflection of the wisdom of Parliament) not to deal with the rights created by orders passed under the Act of 1976. The intention of the Legislature in enacting the Repeal Act of 1999 is reflected firstly in section 2 thereof, whereby the Act of 1976 is repealed, and is reflected in section 4 whereby all pending proceedings have been declared to have abated. If the Repeal act of 1999 does not choose to deal with the so-called rights created by orders passed under the Act of 1976, it does not necessarily mean that those rights are left in limbo, or that they cease to exist as rights. The abolition and repeal of the Act of 1976 only means that the machinery for enforcement of rights created by orders passed under that Act has ceased to exist. I would not go to the length of saying that the rights which may have been created under those orders are incapable of enforcement through civil courts, particularly since the implied bar against the jurisdiction of civil courts is simultaneously removed by the abolition and repeal of the Act of 1976.

16. Thus, for the reasons aforesaid, I find and hold that the present petition abates and is accordingly disposed of with no order as to costs. Interim relief stands vacated.

17. At the request of learned counsel for the

Respondent, the Civil Application is permitted to be converted into Misc. Criminal Application seeking a similar or appropriate relief.

18. At the request of learned counsel for the petitioner, the interim relief granted earlier is extended upto 6th August 1999 with a view to prefer a Letters Patent Appeal.

****

sca869797j